Supreme Court, U.S.
FILED

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No. 971907 MAY 26 1998

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In The
SUPREME COURT of the UNITED STATES
October Term, 1998

Claire A. Doucette
Petitioner

v.

United States District Court for the
Southern District of California
San Diego Unified Port District
The State of California
Respondents

On Petition For Writ Of Certiorari To
The United States Court Of Appeals For
The Ninth District

PETITION FOR WRIT OF CERTIORARI

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pro se
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619-222-1186 (msg)
619-986-7218 (pgr)

63 pp

1) Does San Diego Bays submerged lands, tidelands, and added lands belong to the "state" as the 9th Circuit court contends, or the "federal" as Congress International law and the Supreme Court contends?

2) Does the Federal-State geographical boundary line as defined by the Supreme Court (449 US 408) join the bays original high tide line thereby completing a circle enclosing the bay?

3) Does the word "state" as used in the "Law Of The Sea Treaty" refer to the "state" of California as the 9th Circuit court contends, or "Nation" (United States) as defined by C.J.S ?

4) Do the treaties provisions apply only to foreign vessels as the 9th Circuit court alleges or to all vessels of every nation including the United States?

5) Does the anchoring statute 33 USC 471 preempt state laws on the same subject where there is a Coast Guard presence?

6) Does the petitioners constitutional right to travel include her right to anchor anywhere except federally restricted areas?

7) Is the navigable capacity of the bay being obstructed within the meaning of the Rivers and Harbors Act of 1899 by the respondents "no anchoring" laws?

PARTIES TO ACTION

1. San Diego Unified Port District
2. Don L Nay, Director SDUPD
3. Port Commissioners:
   - W. Daniel Larson
   - Raymond W. Burk
   - Phil Creaser
   - Milford W. Portwood
   - Delton C. Reopelle
   - William B. Rick
   - Louis W. Wolfsheimer
   - Susan Lew
   - David L. Malcolm
   - J. Michael McDade
   - Paul N. Speer
   - Patricia A. McQuater
   - Frank Urtasun
   - Jess Van Deventer
4. The State of California

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OPINIONS BELOW/JURISDICTION

Petitioner, Claire Doucette, respectfully requests that this Court review on a writ of certiorari the conclusions made by the United States Court of Appeals for the Ninth Circuit on their Memorandum filed October 10, 1997, No. 95-56126, District Court No. CV-95-00682 MLH, rehearing denied February 24, 1998, all of which are unreported.

This request conforms with rule 10(c), where "the United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this court, and has decided an important federal question in a way that conflicts with relevant decisions of this Court." Statutorially, this case falls under 28 USC 1254 and 28 USC 2101.

Petitioners original action was brought in the District Court under 28 USC 1331 on May 26,1995. The action was subsequently dismissed with prejudice on July 25, 1995.

Appeal was made to the Ninth Circuit Court of Appeals under 28 USC 1291 in December, 1995.

CONSTITUTIONAL PROVISIONS INVOLVED

Article I Section 10 Clause 1
Article I Section 10 Clause 3
Article VI

STATUTORY PROVISIONS INVOLVED

33 USC 403(1899)
Rivers and Harbors Act

33 USC 471(1915)
Anchorages Statute

43 USC 1301-1315(1953)
Submerged Lands Act

1850 US Stat 452 sec. 3 ch 50
California Admission to Union

TREATY PROVISIONS INVOLVED

Convention on the Territorial Sea
and the Contiguous Zone
"Law of the Sea"
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53 L. Ed.2d 94.(1977)

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United States v. Monstad
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denied Feb.24, 1998)

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125 U.S.629(1887)

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205 Cal.App.3d,1189(1988)

Graf v. San Diego Port Dist.
7 Cal. App.4th,1224(1992)

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Code, Sects.4.30,4,35,4.40

C.J.S. Words and Phrases
Vol.40,P.17

FACTS

Petitioners original action was brought in the District Court under 28 USC 1331 where violations of constitutional rights as well as laws and treaty of the United States were alleged. The case was dismissed without trial on defendants motion.

In response to question 1, ownership of submerged lands, etc., petitioner offers proof of federal ownership by way of (1) the Submerged Lands Act as amended by this Court in 1965, 1966, 1977 and 1981 per the request of Congress and (2) the Law of the Sea Treaty as adopted and interpreted by this Court in 1965, 1966, 1977 and 1981, as well as one 9th Circuit Case.

In response to question 2, the extension of Federal-State boundary line into San Diego Bay, petitioner offers the uncontested existence of an original high tide line established by the Army Corps of Engineers about when the State entered the Union.

In response to question 3, the lower courts misunderstanding and misuse of the meaning of the word "State" used in an international treaty, petitioner offers this Court's definition of

"state" meaning "nation" as used in international treaties (C.J.S. Words and Phrases, Vol.40,P.17) and U.S. Constitution Art. I, VI and the California Act of Admission, both of which prohibit a state of the union entering into the treaty itself.

In response to question 4, does the Law of the Sea Treaty apply only to foreign vessels, petitioner offers Article 17 of said treaty.

In response to question 5, does a federal anchoring statute preempt identical state laws even when there is a Coast Guard presence, petitioner offers all of the authorities used in question 1 showing that federal jurisdiction is supreme over federal lands, an analysis of the statute showing preemption, two 9th circuit cases and one C.F.R.

In response to question 6, a citizens right to travel includes a right to anchor indefinitely on federal public waters, unhindered by state law, petitioner offers opinions from this court in 1969, three 9th Circuit cases, two federal statutes, one Puerto Rico case, one 4th Circuit case, and the absence of any federal laws to the contrary.

In response to question 7, is the navigable capacity of San Diego Bay being obstructed, within the meaning of the Rivers and Harbors Act of 1899, by respondents no-anchoring laws, petitioner offers opinions from this court in 1943, 1960, 1887 and one 9th Circuit case.

ARGUMENT

1) USA HOLDS TITLE TO SAN DIEGO BAY

The Ninth Circuit Court of Appeals has decided an important federal question in a way that conflicts with relevant decisions of this Court by completely omitting pertinent facts of law when they decided the State of California holds title to San Diego Bays submerged lands and shares jurisdiction on the waters above them.

> "Although the State holds title to the Bay, the Submerged Lands Act provides concurrent federal and state jurisdiction over submerged lands and the waters above them. See Barber v Hawaii 42 F 3d 1185, 1190 (9th Cir 1994). The State's power to control local waterways is absolute except as limited by the federal government which may adopt preemptive regulations." (Doucette v San Diego Port Dist. U.S. 9th

Cir. No. 95-56126, DC No. CV-95-00682 MLH, page 3 filed Oct. 10, 1997, rehearing denied Feb. 24, 1998)

The above Ninth Circuit ruling conflicts with the Submerged Lands Act (43 USC 1301-1315, 1953) as amended by four of this Supreme Courts decisions: U.S. v Cal.85 S.Ct 1401(1965); U.S. v Cal.86 S.Ct 607 (1966); U.S. v Cal.97 S.Ct 2915 (1977) and U.S. v Cal.449 U.S. 408 (1981), and the Law of the Sea Treaty, (15 UST 1607, 1958).

This case turns on who is the true owner of San Diego Bay, its tidelands and added lands. The syllabus to U.S. v Cal. (1965) 85 S.Ct. 1401 provides a concise, understandable history of the complex set of events that led to the definitions and clarifications given in that case and subsequently in the U.S. v Cal. decrees of 1966, 1977 and 1981 defining ownership of San Diego Bay.

> "The United States brought this suit in 1945 against California to determine dominion over the submerged lands and mineral rights under the three-mile belt of sea off the California coast. In 1947 this court held (332 U.S.19) that the United States posssessed paramount rights in such lands and minerals underlying the Pacific

Ocean seaward of the low-water mark on the California coast and outside of inland waters. Thereafter the Court appointed a Special Master to determine for specific coastal segments the line of ordinary low water and the outer limits of inland waters. In his report, filed in 1952, the Master based his definition of inland waters on that applied by the United States in its foreign relations as of the date of the 1947 decree. Both parties noted exceptions to the Report, but before any further action, the Submerged Lands Act was enacted in 1953. This Act gave the States ownership of the lands beneath navigable waters within their boundaries, including the seaward boundaries "as they existed at the time such State became a member of the Union," but in no event to be interpreted as extending from the "coastline" more than three geographical miles into the Pacific Ocean. "Coastline" was derivatively defined in terms of the seaward limit of "inland waters", a term not defined by the Act. No action was taken on the Master's Report until 1963, when the United States filed an amended complaint reviving the Report and redescribing the issues as modified by the Submerged

> Lands Act. The United States contends that the Act simply moved the line out three miles from the line established by the decree in 1947, while California asserts that "inland waters" as used in the Act means not what the United States would claim as such in international relations but what the States historically considered to be inland when they joined the Union.
> *Held*:
> 1. The Act's legislative history shows that "inland waters" was to be defined by the courts. Pp.150-160." (Emphasis added) (Syllabus U.S. v Cal.(1965) 85 S.Ct. 1401)

The Act gave the states ownership of the land beneath navigable waters, but only "within their boundaries", i.e. internal lakes and rivers ruled federal by this court in 1947, and submerged lands three miles from the "coastline". The definition of, and thus ownership of, "inland waters" was left to be decided by the courts.

This court first defined "coastline" in order to establish a line that would divide the waters into "inland waters" and the open "sea". The Court chose to use the Law of the Sea Treaty to define the limits of inland

waters "as used in the Act". The following is this courts definition of "coastline":

> "The line marking the seaward limits of inland waters. The coastline is to be taken as heretofore and hereafter modified by natural and artificial means, and includes the harbor system within the meaning of the Convention on the Territorial Sea and the Contiguous Zone. T.I.A.S. No.5639." U.S. v Cal.(1966) 382 U.S.448 (Emphasis added)

This Court then interpreted the treaties definition of "inland waters" to mean that all ports would belong to the Nation, not the State. (NOTE San Diego Bay is an uncontested port).

> "4. As used herein, "inland waters" means waters landward of the baseline of the territorial sea, which are now recognized as internal waters of the United States under the Convention on the Territorial Sea and the Contiguous Zone. The inland waters referred to in paragraph 2(b) hereof include-...
> (b) Any port, landward of its outermost permanent harbor works and a straight line across its entrance;"

U.S. v Cal 382 U.S.448 (1966)
(Emphasis added)

Notice that there is no exception. If it is "inland waters" and/or it is a port, it belongs to the United States and there is a line delineating the area. The Court describes this line as a Federal-State boundary:

> "The parties shall submit to the Court for its approval any stipulation or stipulations that they enter into, identifying with greater particularity all or any part of the boundary line, as defined by this decree, between the submerged lands of the United States and the submerged lands of the State of California."
> (U.S. v Cal. 86 S.Ct 609 at par.13)
> (Emphasis added)

In 1977 and 1981 this Court found it necessary to specifically define individual bodies of U.S. owned "inland waters", including San Diego Bay. The 1977 ruling established one end of the Federal-State boundary line of San Diego Bay.

> "For the purpose of identifying with greater particularity parts of the boundary line, as defined by the Supplemental Decree of January 31, 1966, 382 U.S.448, 86 S.Ct.607, 15 L.Ed.2d 517, between

the submerged lands of the United States and the submerged lands of the State of California, it is ORDERED, ADJUDGED AND DECREED that this Court's Supplemental Decree of January 31, 1966 be, and the same hereby is, further supplemented as follows:...

2. *Artificial Extensions of the Coastline*

The mean lower low-water line along each of the following structures is part of the coastline of California for purposes of establishing the Federal-State boundary line under the Submerged Lands Act...

p. The Zuniga jetty at San Diego (including the southern seaward end of this entire structure).

The foregoing is without prejudice to the right of either party to assert or deny that other artificial structures are part of the coastline of California for purposes of establishing Federal-State boundary line under the Submerged Lands Act. (U.S.v Cal.(1977) 431 U.S.40, 53 L.Ed.2d 94)

(Emphasis added)

The other end of the line was defined by this Court in 1981 specifically identifying San Diego Bay as "inland waters", and confirming the

fact that there is a line across the mouth of San Diego Bay separating the United States owned inland waters of San Diego Bay from the California owned outer waters.

> "...2. The inland waters of San Diego Bay are those enclosed by a straight line from the seaward end of Point Loma...to the point at which the line of mean lower low water intersects with the southern seaward end of the Zuniga jetty." (U.S. v Cal.(1980) 449 U.S.408) (Emphasis added)

As for jurisdiction over the waters of San Diego Bay, it is exclusively federal for California cannot legally or constitutionally extend their jurisdiction beyond their geographical boundaries any more than the state of Virginia can cross the Potomac river into the federal District of Columbia.

The District Court devoted three sentences to U.S. v Cal. (1965) 85 S.Ct. 1401, misinterpreting it, and none of the above facts of law have been addressed by the Ninth Circuit Court or respondants despite repeatedly being presented for review.

2) MEAN HIGH TIDE LINE IS FEDERAL-STATE BOUNDARY LINE AROUND SAN DIEGO BAY

All sections of the Submerged Lands Act, as amended, apply to San Diego Bay. Since the Court has determined the bay to be outside the "boundaries" of the State, the Acts definition of "boundaries" apply:

> "The term "boundaries" includes the seaward boundaries of a State...as they existed at the time such State became a member of the Union." (43 USC 1301(b))

California was admitted to the Union in 1850. Shortly before, as part of the Act of Admission, San Diego Bay was surveyed and a line was established that runs almost completely around the Bay separating it from California. That line was called the Mean High Tide Line and has been used for almost 150 years as the boundary line of San Diego Bay.

The above fact of law has not been addressed by the Ninth Circuit Court, the District Court or respondents, despite repeatedly being presented for review.

3) "STATE" MEANS "NATION" IN TREATY

The Ninth Circuit Court in this case has stated that the treaty requires

all vessels must comply with California's laws.

> "Doucette does not argue that her boat is a foreign vessel, moreover, as the Treaty requires all vessels to comply with the laws and regulations of the coastal state, it is unclear why the Port District ordinances in question would conflict with the treaty." (Memorandum of Oct. 10, 1997 Page 7) (Emphasis added)

This above referenced opinion comes from article 17 of the treaty as follows;

> "Foreign ships expressing the right of innocent passage shall comply with the laws and regulations enacted by the coastal state in conformity with these articles and other rules of international law and, in particular, with such laws and regulations relating to transport and navigation."(15 UST 1607 Article 17) (Emphasis added)

The Ninth Circuit erred in its interpretation of the word "state".

> "the word "state" when used in treaties upon the law of nations means the "nation" and not any subdivision of it" Crapo v Kelly 83 U.S. 610, 16 Wall. 610, 21 L.Ed. 430(C.J.S. Words & Phrases Vol. 40,P.17)

This is not the first time the 9th Circuit Court has misinterpreted the term "state". The 9th Circuit used the same unique definition of "state" in Barber, upon which they relied heavily to decide petitioners case:

> "The treaty expressly provides for regulations such as those promulgated by Hawaii. The treaty provides that "foreign ships exercising the right of innocent passage shall comply with the laws and regulations enacted by the Coastal state..., in particular, with such laws relating to transport and navigation" 1958 Convention Art. 17 15 UST at 1611." (Barber v State of Hawaii 42 F.3rd 1185) (9th Cir. Nos. 93-15678, 93-1586 Nov. 30, 1944)) (Emphasis added)

This respondants interpretation and use of "state" to mean State of California as opposed to the United States of America and applying it to an international treaty is unprecedented and violates the Constitution and the California Act of Admission;

> "This constitution and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States , shall be the

supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any State to the contrary not withstanding." (U.S. Const. Art.VI)

"No State shall enter into any treaty, alliance or confederation;..." (U.S. Const. Art. I Sect 10-par. 1)

"No State shall, without consent of congress,...enter into any agreement or compact with another state, or with a foreign power,..." (U.S. Const. Art I Sect 10-par. 3)

"And be it further enacted, that the said State of California is admitted into the Union upon the express condition that the people of said State, through their legislature or otherwise, shall never interfere with the primary disposal of the public lands within its limits, and shall pass no law and do no act whereby the title of the United States to, and right to dispose of, the same shall be impaired or questioned;...." (1850 US State 452 sec. 3 ch. 50)

This is a gross error on the part of the Ninth Circuit Court, setting a

very dangerous precedent that presently violates the Law of the Sea Treaty, its interpretation by the Supreme Court (U.S. v Cal. (1966)86 S.Ct. 607 at 608 sec. 4), and the international community who regularly use the Bay.

4) TREATY INCLUDES ALL VESSELS

The 9th Circuit Court in this case has stated that Petitioners vessel is not a foreign vessel ergo the treaty doesn't apply to her.

> "Doucette does not argue that her boat is a foreign vessel, ..." (Memorandum of Oct. 10, 1997 Page 7)

The Treaty provides for ships of all states (meaning "nations"), not just foreign.

> "Subject to the provisions of these articles, ships of all states, whether coastal or not, shall enjoy the right of innocent passage through the territorial sea". (15 UST 1603 Art 14).
>
> The word "state" as used in the above quote means "nation", (C.J.S., Id.)

No parallel cases were found.

The Ninth Circuits contention that the Treaty applies only to foreign ships is clearly in error.

5) 33 USC 471 PREEMPTS STATES NO ANCHORING LAWS

As to the controversy over whether the statute 33 USC 471 is preemptive of local ordinances. This issue has previously been before the 9th Circuit and the court said that federal law supersedes State law even though there has been no federal action.

> "These designations by the harbor commissioners of forbidden anchorages in the harbor were authorized by section 2524 of the Political Code of the State, since superseded and jurisdiction assumed by the United States by the Act of Congress of January 28, 1915, creating the Coast Guard etc....and section 7 of the Rivers and Harbors Act of March 4, 1915." [U.S. v. King 5 F. 2d. 780 at 781(9th Cir. 1925)]

It is clear the ordinances in question are invalid, but in any event if the respondent were to have jurisdiction on the Bay, the ordinances would be preempted by the statute. Congress has provided a complete regulatory scheme that leaves no room

for states to supplement it, thereby preempting similar state laws on the same subject.

> "Congress may implicitly occupy a field through pervasive regulations that leave no room for states to supplement or through the federally sensitive nature of the particular subject area (e.g. foreign affairs)" [Beveridge v. Lewis 939 F.2d. 859 at 862 (9th Cir. 1991)]

Congress provides by way of 33 USC 471 that;

> "The Secretary of Transportation is authorized, empowered and directed to define and establish anchorage grounds for vessels in all harbors...whenever it is manifest to said secretary that maritime or commercial interests of the United States require such anchorage grounds for safe navigation..."(33 USC 471)

The statute next provides that anyone who finds a requirement for a new anchorage need only apply to the Army Corps of Engineers.

> "The establishment of such anchorage grounds shall have been recommended by the chief of Engineers" (33 USC 471)

The statute further provides that

the Secretary shall provide rules, regulations, enforcement, penalties for noncompliance, including the name of the arresting officer, and the court to hear the case.

> "and to adopt suitable rules and regulations in relation thereto; and such rules and regulations shall be enforced by the Coast Guard....In the event of the violation of any such rules and regulations by the owner, master or person in charge of any vessel, such owner, master or person in charge of such vessel shall be liable to a penalty of $100; and the said vessel may be holden for the payment of such vessel, and may be seized and proceeded against summarily by libel for the recovery of the same in any United States district court for the district within which such vessel may be and in the name of the officer designated by the Secretary of Transportation"(33 USC 471)

Notice; this statute does not provide for mooring areas.

Just to make sure that the state not be allowed to share regulatory enforcement of anchorages with the Coast Guard, the Secretary provided a C.F.R. to that end.

"Except for those matters specified in paragraph (h), (i) and (j) of this section, the commandant redelegates to each Coast Guard District Commander, with the reservation that his authority shall not be redelegated, the authority to issue rules and regulations pertaining to the following (1) anchorage grounds and special anchorage areas. (33 CFR 1.05-1g)

The exception (h) above provides that "The commandant reserves authority to issue rules and regulations specified in paragraph (g)."

(i) provides that the commandant redelegates to the Chief Office of the Marine Enviroment and Systems, U.S. Coast Guard with the same reservations as (g). (j) is the same as (g) except that the redelegation is to the chief, Office of Navigation, U.S. Coast Guard Headquarters.

The respondent 9th Circuit court has consistently taken the statute out of context, ignored the CFR and used this misconception to support their no federal preemption argument for many years setting a dangerous precedent, not only for their own future cases, but for other federal and state courts nationwide. The result is devastating to

mariners worldwide and only this court has the power to rectify this travesty of justice.

6) ORDINANCES OBSTRUCT RIGHT TO TRAVEL

A citizens constitutional right to travel unhindered by state laws was assured by this court in 1969;

> "All citizens must be free to travel thoroughout the United States uninhibited by Statutes, rules or regulations which unreasonably burden or restrict this movement". (Shapiro v Thompson (1969) 394 US 634 89 S.Ct. 1322)

Anchoring is a necessary part of navigation (traveling on the water) without limitation:

> "....If during the course of or at the end of a voyage a vessel is anchored or docked she is nevertheless engaged in navigation"(U.S. v Monstad (1943) 134 F.3d. 986 at 988)

Congress has provided for designated and special anchorage areas as required by 33 USC 471 (Id), however the rules thereof often have time restrictions in order to limit overcrowding. As for the rest of the navigable waters, Congress has not made any laws prohibiting anchoring except in

channels and in federally restricted areas. C.F.R.'s may also restrict anchoring in hazardous areas, but the rest of the waters, being in the majority, is unregulated and unrestricted as to time limits or type of vessel. It is clear that congress intended that there be an absolute minimum of obstructions to traveling by vessels without discrimination as to type or use of vessel or how long one anchors.

> "The court has reviewed the applicable United States Statutes and Regulations, and finds that anchoring is prohibited only in navigable channels, 33 U.S.C.A. 409 and in restricted areas, such as the channels, 33 C.F.R. 207.810 (d) and seaplane landing areas, 33 C.F.R. 207.12(a) and (b). The question for decision is then whether the action of the Corsario in anchoring at the point of collision was unlawful. In the absence of regulatory prohibition or a finding that as a matter of fact, the anchored vessel was obstructing navigation, it cannot be held that anchoring at the point of collision constitutes fault. On this issue the court finds the Corsario free from fault" (Rosado v Pilot Boat No.1 (1969) 304 F. Supp. 49 at 53)

"We do not think the Congress intended by act March 3, 1899, c. 425 sec. 15, 30 Stat. 1152 [U.S. Comp. St. 1901, p 3543] to absolutely forbid anchoring in navigable waters, except only at such places as the location of the vessel would necessarily prevent the passage of other vessels, or obstruct them in passing to such an extent as to make the effort to do so a dangerous maneuver"[The Caldy v The New Orleans 153 F. 837 at 840, (4th. Cir. 1907)].

Another of respondents 9th Circuit cases shows that an anchorage of custom is lawful even though it was undesignated and in a channel.

"The court likewise found that there was no established anchorage ground at that place, and this finding would seem to cover an anchorage ground established by custom as well as an anchorage ground established by law.[The Boston Maru 20 F.2d. 508 at 509 (9th. Cir. 1927)].

Yet another of respondents 9th Circuit cases has previously addressed this very issue by ruling that a vessel at anchor outside an established anchorage is not negligent.

"The libel is of course, based on

negligence, and the mere dropping of an anchor in public waters in the vicinity of an unknown and unmarked cable does not constitute such negligence, but it is said that the anchor was dropped outside of the established anchorage grounds, and that this of itself was negligence."

"For these reasons, the charges of negligence have not been sustained, and the decree of the court below is reversed, with instructions to dismiss the libel." [The Georgie 14 F. 2d. 98 at 99, 100.(9th Cir. 1926)]

7) ORDINANCES OBSTRUCT ACT OF 1899

The language in the Rivers and Harbors Act of 1899 prohibits obstructions to the navigable capacity of the bays without stating limitations as to whether they be physical or political. It is clear that congress did not intend that there be limitations, and this court affirms as follows:

"The term obstruction as used in section of the Rivers and Harbors Act prohibiting the creation of any obstruction not affirmatively authorized by Congress bans any type of obstruction, not merely those specifically made subject to

approval by the Secretary of Army, and the term "obstruction" as so used is broad enough to include diminuation of navigable capacity of a waterway in ways not included in second and third clauses of such statute referring to structures, and to excavating, filling, altering or modifying of course, location, condition or capacity of any navigable water of the United States. Rivers and Harbors Appropriation Act of 1899 Secs. 10, 13, 33 U.S.C.A. secs. 403, 407"(U.S. v. Republic Steel (1960) 80 S.Ct. 884, 362 US 482)
Note: A vessel at anchor is in fact "in navigation" (See U.S. v Monstad Id.)

Respondants affirmation of ordinances that restrict or eliminate anchoring, coupled with the knowledge that anchored vessels are in navigation, (see Monstad Id.) make it clear that the ordinances restrict or obstruct navigation within the meaning of the Rivers and Harbors Act:

"It shall be unlawful to anchor, moor, make fast to the bottom, strand or ground vessel or structure within San Diego Bay as defined in Sec. 4.30 (b) 1 of this code." (SDUPD Code sec. 4.30)

"anchoring or mooring in central San Diego Bay except in Special Federal Anchorage A5, and in anchorage areas designated in section 4.35(c) 1 and 4.35 (c) 2 if this code is prohibited and unlawful. (SDUPD Code sec. 4.35)

"anchoring or mooring in North San Diego Bay, except in moorage areas designated in Sections 4.08, 4.20, 4.25, and 4.27 of this code and the anchorage area designated in section 4.40 (c) 1 of this code is prohibited and unlawful. (SDUPD Code sec. 4.40)

It was found by this court that Oregons Act of Admission declaring "that all of the navigable waters of the state shall be free to all citizens of the United States", meant "free" of political regulations that obstruct.

"The act of Congress of February 14, 1859 admitting the State of Oregon to the Union, which declares that all the navigable waters of the State shall be common highways and forever free to all citizens of the United States."....

"It seems clear, therefore, that according to the construction given by this court to the clause in the Act of congress relied upon by the

court below, it does not refer to the physical obstructions, but to political regulations which would hamper the freedom of commerce." (Willamette Iron Bridge v Hatch (1887) 125 US 629)

CONCLUSION

This case began three years ago when Petitioner filed suit in the U.S. District Court for the Southern District of California against the San Diego Unified Port District and the State of California for lack of jurisdiction over San Diego Bay.

It was instigated by the Port's enactment of its final ordinance meeting its goal of closing off anchoring in San Diego Bay.

Petitioner believes the Bay, its submerged lands, tidelands and added lands belong to, and are under the exclusive jurisdiction of, the United States.

This belief is mainly rooted in the four U. S. v Cal. Supreme Court cases under discussion, which were based on the terms used in The Law of the Sea Treaty and which amended the Submerged Lands Act to determine Federal-State boundaries pertinent to that Act.

These rulings are central to Petitioners arguments and have been ignored by the Port, the State, the District Court and the 9th Circuit Court causing Petitioner to wonder: Is this a conspiracy of silence? If nothing is said about these cases, do they not exist? Do Supreme Court decisions have validity?

Every argument presented by Petititoner has been answered, except these rulings which receive a stoney silence.

Overt omission of these rulings should constitute compelling interest to this Court.

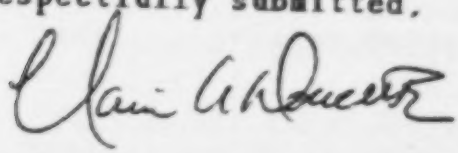
The original question of Federal vs. State ownership of San Diego Bay is unanswered with omission of these decisions. That question should constitute compelling interest for this Court, and certainly can only be answered by this Court.

And finally, an issue has arisen thru the 9th Circuits (mis)interpretation of the word "state" in The Law of the Sea Treaty. One of the primary reasons for the Treaty was port to port legal uniformity which would be undone with the 9th Circuits unique interpretation. Allowing it to stand

would invite every coastal bureaucracy to make its own rules. This issue is not only of compelling interest to, but again can only be answered by this Court.

For these compelling reasons, Petitioner begs the Court to grant this Petition for Certiorari pursuant to S.Ct. Rule 10(c).

Respectfully submitted,



Claire A. Doucette, petitioner - pro se

2726-338 Shelter Island Dr.
San Diego, CA 92106-2731
619-222-1186 (message)
619-986-7218 (pager)

May 22, 1998

APPENDIX

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH DISTRICT

FILED
OCT 10 1997
CATHY A. CATTERSON
U. S. COURT OF APPEALS

NO. 95-56126
D.C. NO. CV-95-00682 MLH

MEMORANDUM*

CLAIRE A. DOUCETTE
Plaintiff-Appellant

v

SAN DIEGO UNIFIED PORT DISTRICT, et.al.
and
THE STATE OF CALIFORNIA
Defendants-Appellees

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Appeal from the United States District Court for the Southern District of California
Marilyn L. Huff, District Judge, Presiding

Submitted October 7, 1997**
Pasadena, California

Before: PREGERSON, D.W. NELSON and HAWKINS, Circuit Judges

Claire A. Doucette appeals the district court's judgement dismissing her action pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted. Doucette claims that under the Submerged Land Act, 43 U.S.C. 1301-15, congress transferred ownership of the San Diego Bay ("Bay") from the State of California ("State") to the federal government. Based on this premise of federal ownership, Doucette argues that the federal government holds exclusive jurisdiction over the Bay. She thereby challenges the authority of the State to delegate regulatory power to the San Diego Unified Port District ("Port District"). In addition, Doucette

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**The panel unanimously find this case suitable for decision without oral argument. Fed.R.App.P.34(a) and Ninth Circuit Rule 34-4.

argues that by enacting comprehensive legislation, the federal government has preemptively occupied the field of anchorage and mooring. Finally, Doucette claims that the local ordinances adopted by the Port District are invalid because they conflict with federal and international law.

We have jurisdiction pursuant to 28 U.S.C. 1291, and we affirm the district court.

A dismissal for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6) is reviewed de novo. See e.g. Stone v Travelers Corp., 58F.3d 434,436-7 (9th Cir.1995).

Doucette argues that under the Submerged Lands Act, Congress transferred ownership of the Bay to the federal government. In passing the Submerged Lands Act, however, Congress merely dictated that lands beneath navigable waters within three miles of state boundaries belong to the respective states, thereby negating the Supreme Court's ruling in United States v California, 332 U.S. 804(1947) (holding that submerged lands belonged to the federal government). Contrary to Doucette's argument, the Submerged Lands Act did not transfer title of inland waters to the federal government; rather, the State still holds title to navigable waterways within its borders, as well as the

lands beneath them, as a trustee for the public. See Graf, 7 Cal.App. 4th at 1228.

Although the State holds title to the Bay, the Submerged Lands Act provides concurrent federal and state jurisdiction over submerged lands and the waters above them. See Barber v Hawaii, 42 F.3d 1185, 1190(9th Cir.1994). The State's power to control local waterways is absolute except as limited by the federal government, which may adopt preemptive regulations. See Graf v San Diego Unified Port Dist. 7 Cal.App.4th 1224,1228-9(1992). Absent express statutory language, federal preemption occurs only if: 1) the subject area addressed is one of utmost federal sensitivity; 2) Congress has implicitly occupied the field with comprehensive legislation that leaaves no room for state supplementation; or 3) local regulation actually conflicts with federal law. Beveridge v Lewis, 939 F.2d 859,862(9th Cir.1991). As discussed below, none of the preemption criteria is met in present case.

Anchorage and mooring is not a federally sensitive subject area. In fact, the Ninth Circuit has acknowledged "the Supreme Court's longstanding recognition that anchorage and mooring rules are best left to the states in the absence of compelling government interests to the contrary."

Barber, 42 F.3d at 1193; see also Beveridge, 939 F.2d at 863 (noting that local communities are more competent to regulate anchorage and mooring than the federal government) Doucette points to no compelling federal interests that support federal preemption here.

Further, Ninth Circuit precedent clearly established that the federal government has not implicitly preempted state regulation of anchorage and mooring by enacting sweeping regulation. Many of the arguments raised by Doucette were considered and rejected by this Court in Barber v Hawaii, in which we upheld the State of Hawaii's delegation of regulatory authority over anchorage and mooring to the Hawaii Department of Transportation. Notably, this Court specifically repudiated the claim that "federal regulation in the field of navigation is so extensive that it manifests an implicit intent on the part of Congress to preempt [the state's] actions." Barber, 42 F.3d at 1190. Instead, the court found that "[f]ederal laws and regulations have not occupied the field of anchorage and mooring." Id. at 1190,1193.

Doucette nonetheless argues that the federal government exhibited an intent to occupy the field by enacting a comprehensive regulatory scheme that addresses anchorage and mooring. As an

example, Doucette has supplied a copy of the Army Corps of Engineers' November 24, 1995 "Policy Statement on Floating Structures". A letter submitted by the Department of the Army, however, provides as follows:

> We appreciate the opportunity to clarify some of Ms. Doucette's misconceptions concernig this policy...
>
> The sole objective of this policy statement is to provide additional guidance for the implenentation of Section 10 of the Rivers and Harbors Act of 1899 on the navigable waterways within the Los Angeles District of the Corps. of Engineers.

See Dept. of Army letter, exhibit "C", Appellee's Suppl. Brief (emphasis in original); see also 33 C.F.R. 320.1(a)(5) (acknowledging joint authority of federal and state governments to adopt complementary regulatory programs).

Other federal regulations to which Doucette refers explicitly recognize state and local governments' continuing roles in regulating anchorage and mooring. For instance, 33 C.F.R. sect. 110.90 states that "mariners anchoring in San Diego Harbor should consult applicable local ordinances of the San Diego Unified Port District," thereby acknowledging the joint jurisdiction of

federal and local authorities over local matters. Likewise, 33 C.F.R. sect 110.210 provides that the harbor shall be administered by the Port District.

Doucette's reliance on 33 U.S.C. 471 to establish preemption is also misplaced. Section 471 authorizes the Secretary of Transportation to exercise discretion in establishing anchorages when federal maritime or commercial interests so require. No evidence before the Court suggests that the circumstances encompassed by section 471 presently exist. Nor does section 471 indicate that federal interests would preclude the state from adopting compatible regulations. In fact, the Coast Guard, which is responsible for enforcing section 471, has acknowledged that local anchorage ordinances are consistent with present regulations. See Graf v San Diego Unified Port Dist., 205 Cal.App. 3d 1189,1193(1988). It is clear that in adopting section 471, the federal government did not exhibit any intent to preempt local regulation. See Barber, 42 F.3d at 1192.

Thus, Doucette's position that the federal government has preemptively occupied the field of anchorage and mooring is not persuasive. Accordingly, the local regulations at issue here would only be preempted if they conflict with federal law. Doucette has

provided no convincing evidence of conflict, and this Court finds none.

Although Doucette vaguely suggests that the Port District's regulations conflict with federal statutes, her arguments have no merit. If Congress had intended to depart from its historic policy of permitting state regulation of anchorage and moorings, Congress would have emphasized such a departure with explicit preemptive language. See Cummings v Chicago, 188 U.S. 410,431(1903). None of the federal statutes cited by Doucette contains such language.

This Court is also unpersuaded by Doucette's claims that the Port District's regulations are unconstitutional. While Doucette claims that the anchoring regulations at issue violate her constitutional right of freedom to travel, the Constitution does not encompass the right to unregulated long-term anchoring in public waters. See Graf, 7 Cal.App. 4th at 1232-33. Moreover, contrary to Doucette's contentions, the disputed regulations do not conflict with federal admiralty law, the California Act of Admission or the River and Harbors Act.

Nor are we persuaded by Doucette's argument that the regulations conflict with the Convention on the Territorial Sea and the Contiguous Zone, April 29,

1958, 15 U.S.T. 1606. The Treaty does not provide the right to long-term anchorage. Rather, the Treaty merely permits "continuous and expeditious" passage and allows foreign vessels to stop and anchor if "incidental to ordinary navigation or rendered necessary by force majeure or by distress". See Barber, 42 F.3d at 1195-96 (citing 1958 Convention, Art. 14 par 3, 15 U.S.T. 1610). No such circumstances exist here, and in any event, Doucette does not argue that her boat is a foreign vessel.

Moreover, as the Treaty requires all vessels to comply with the laws and regulations of the coastal state, it is unclear why the Port District ordinances in question would conflict with the Treaty. See id at 1195.

For the above reasons, we conclude that the state holds the authority to regulate the Bay and to delegate regulatory power to the Port District. The ordinances at issue do not conflict with federal law.(1)

AFFIRMED

A TRUE COPY CATHY A. CATTERSON
Clerk of the Court
ATTEST MAR 03 1998
by Marian Foreman Deputy Clerk

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(1) Appellant's request that we stay California superior court case 6892204 is denied.

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
FEB 24 1998
CATHY A. CATTERSON
U.S. COURT OF APPEALS

NO . 95-56126
D.C. NO CV-95-00682 MLH

ORDER

CLAIRE A. DOUCETTE
Plaintiff-Appellant

v

SAN DIEGO UNIFIED PORT DISTRICT
et.al.
and
THE STATE OF CALIFORNIA
Defendants-Appellees

Before: PREGERSON, D.W. NELSON and
HAWKINS, Circuit Judges

The members of the panel that decided this case voted unanimously to deny the petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc and no active judge has requested a vote on whether to rehear the matter en banc (Fed.R.App. P.35)

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

JUDGEMENT

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NO. 95-56126
CT/AG# CCV-95-00682 MLH

FILED
MAR 23 1998
CLERK, U.S. DISTRICT COURT
SOUTHERN CALIFORNIA
BY (unreadable) DEPUTY

CLAIRE A. DOUCETTE
Plaintiff-Appellent

v

SAN DIEGO UNIFIED PORT DISTRICT
et.al.
and
THE STATE OF CALIFORNIA
Defendants-Appellees

APPEAL FROM the United States District Court for the Southern District of California (San Diego).
THIS CAUSE came to be heard on the Transcript of Record from the United States District Court for the Southern District of California (San Diego) and was duly submitted.

ENTERED ON 3/25/98

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District court in this cause be, and hereby is AFFIRMED.

Filed and entered on October 7, 1997

A TRUE COPY
CATHY A. CATTERSON
Clerk of the Court
MAR 03 1998
by M----(unreadable)
Deputy Clerk

UNITED STATES DISTRICT COURT
CALIFORNIA DISTRICT

FILED
JUL 25 1995
CLERK, U.S. DISTRICT COURT
BY M. Marner DEPUTY

CASE NO. CV 95-682 H(POR)

Order Granting Defendants' Motion to Dismiss

CLAIRE A. DOUCETTE
Plaintiff

vs

SAN DIEGO UNIFIED PORT DISTRICT
et.al.
and
THE STATE OF CALIFORNIA
Defendant

INTRODUCTION

The defendants move the court to dismiss the plaintiff's complaint. Because the court find the plaintiff cannot and has not pleaded facts showing the Port District or the State of California acted without authority in enacting the ordinance and because no federal law preempts the ordinance, the court grants the motion to dismiss the complaint.

BACKGROUND

On May 26, 1995, the plaintiff filed a request for a temporary restraining order against the San Diego Unified Port District, several individual defendants who are commissioners for the Port District, and the State of California. At that time, the plaintiff resided on a sailboat, anchored in North San Diego Bay.

On June 5, 1995, the court denied the plaintiff's request for a temporary restraining order. The court found the plaintiff had failed to make a sufficient showing of a likelihood of success on the merits.

The plaintiff's complaint alleges an ordinance adopted by the Port District, which governs anchoring and mooring in San Diego Bay, is invalid.

The ordinance passed by the Port District states the ordinance was passed based on the following concerns:

> South San Diego Bay is naturally shallow with depths ranging from One(1) to Six(6) Feet at low tide, except in marked channels. Problems associated with water quality and flotsam are more prevalent in the South Bay owing to the lack of tidal flushing in this area. Numerous sunken vessels, submerged obstructions and dilapidated watercraft have been abandoned in the area complicating navigation.

The ordinance prohibits the following:

> It shall be unlawful to anchor, moor, make fast to the bottom, strand, or ground vessel or structure within San Diego Bay.

The area of Central San Diego Bay is reserved for aquatic sports activities and anchoring is prohibited in that area. Anchoring is prohibited in North San Diego Bay and is limited to transitory mariners, who anchor for less than seventy-two hours.

The ordinance provides alternative mooring for individuals who wish to reside on their vessels. Specifically, the ordinance states:

> There is hereby established in the southern part of Central San Diego Bay an Anchorage for the accommodation of mariners. This Anchorage is approximately Eighty Two (82) acres in area and lies westerly of the Main Ship Channel and northerly of the westerly projection of the Sweetwater Channel....
> The Bay Bridge Roadstead Moorage area is hereby established for the accommodation of mariners desiring to moor to buoys in Central San Diego Bay.

On March 14, 1995, the plaintiff attended a meeting to protest the Port District's proposed ordinance. The ordinance prohibits plaintiff from anchoring her vessel in its present location. The plaintiff alleges the ordinance would prohibit her from anchoring in "the bay" except for one area which she believes is dangerous and inaccessible.

On April 5, 1995, the plaintiff received notice that the Port District intended to enforce its ordinance, commencing on June 1,1995.

On April 22, 1995, the plaintiff received a notice to vacate from the Port District, requiring her to vacate her present location by June 1, 1995. On May 22, 1995, the plaintiff received yet another notice from the Port District informing her that her vessel was in violation of the ordinance and must be moved by June 1, 1995. In response, the plaintiff filed the current action.

DISCUSSION

A. STANDARD FOR MOTION TO DISMISS

When ruling on a motion to dismiss, the court must accept all material allegations of fact as true and must construe those allegations in the light most favorable to the nonmovant. North Star Int'l v Arizona Corp Comm'n, 720 F.2d 578,581(9th Cir.1983). If the complaint fails to state a claim, the court should grant leave to amend unless it appears beyond a doubt the plaintiff would not be entitled to relief under any set of facts proved. Halet v Wend Inv.Co., 672 F.2d 1305,1309(9th Cir.1982).

B. APPLICATION STANDARD

In her complaint, the plaintiff alleges defendant State of Californiaa has no authority to grant to the Port

District the power to make laws governing the navigable waters of San Diego Bay. She alleges the vessel is not located within the State's borders and, consequently, only the United States has authority to govern San Diego Bay.

As discussed in the court's order denying the plaintiff's request for a temporary restraining order, a district court judge in this District and a California appellate court have rejected the arguments. The court finds the State and Port District had legal authority to promulgate and enforce the ordinance. Consequently, the court grants the defendants' motion to dismiss.

The Ninth Circuit recently addressed a similar mooring and anchoring ordinance. Beveridge v Lewis, 939 F.2d 859(9th Cir.1991). In Beveridge, the city of Santa Barbara passed an ordinance regulating mooring and anchoring. The plaintiffs who had moored within the area brought action and argued the federal government has exclusive jurisdiction over regulation of the coastal waters within the United States.

The Ninth Circuit rejected the plaintiff's argument. Specifically, the Ninth Circuit concluded federal law did not preempt the ordinance. The Ninth Circuit reasoned:

> [T]he local community is more likely competent than the federal government to tailor environmental regulation to the ecological sensitivities of a particular area.

Id. at 863 (quoting Chevron v Hammond, 725 F.2d 483,493(9th Cir.1985).
In a comprehensive and well-reasoned decision, Judge John S. Rhoades has also rejected the arguments presented by plaintiff. San Diego Unified Port District v Graf, No.91-1491(S.D. Ca. Feb 18, 1992). First, Judge Rhoades rejected the argument that the federal government alone has the authority to regulate anchoring in San Diego Bay. 33 C.F.R. sect 110.90 and 110.210 provide that state and local authorities "may adopt regulations concerning anchoring" if those regulations are "not inconsistent with the federal statutory and regulatory scheme."

Judge Rhoades found federal regulations governing the San Diego Bay did not preempt the Port District's ordinance and were not inconsistent with the ordinance. The ordinance addressed by Judge Rhoades is similar if not identical to the current ordinance.

The plaintiff argues the ordinance is inconsistent with federal law. Judge Rhoades addressed the ordinance in relation to the Federal Obstruction

statutes, 33 U.S.C. 403, 409: and the Submerged Lands Act, 43 U.S.C. 1301. As in the case before Judge Rhoades, these code sections are not inconsistent with the ordinance. The code sections explicitly give authority to the state to pass such an ordinance. The court, therefore, finds the plaintiff's arguments to be without merit.

Judge Rhoades also rejected the argument that anchoring ordinance violates the constitutional right to travel. The plaintiff in this action also has not pleaded facts indicating the ordinance affects or hinders interstate travel. The plaintiff, therefore, has not presented an issue as to the right to travel claim. See In re Merrill Lynch, 812 F.2d 1116,1122(9th Cir.1987).

Finally, a California appellate court has rejected the arguments presented by the plaintiff in an extensive and well-reasoned opinion. The court directly addressed the issue of the State's and/or City's authority to promulgate regulations affecting San Diego Bay and the Port District's authority to enforce regulations. The court upheld the legality of the ordinance at issue in this case, Graf v San Diego Unified Port District., 205 Cal.App.3d 1189,1197 (1988).

As discussed in the court's order denying the request for injunctive relief, the court in Graf concluded the State had properly delegated authority to the Port District to enforce the ordinance "as trustee over the tidelands and submerged lands of the San Diego Bay...." Id. The court rejected the constitutional challenges to the ordinance. The court acknowledged the purpose for imposing the ordinance:

> [T]he South San Diego Bay [is] extremely shallow making any anchorages in that area very dangerous to those vessels anchored there. Many vessels had become grounded or abandoned there and required removal by the Port District at considerable expense. The study of the tides and currents showed there was very little water circulation in the South San Diego Bay area. As a result, pollution generated by the vessels anchored there was greatly intensified.

Id. at 1192.

The court addressed the relationship between the State and federal government and their powers to regulate navigable waterways and tidelands. The court stated: "When California was admittedd to statehood in 1850 it acquired title to the

navigable waterways and tidelands within its waters, not in a proprietary capacity but as a trustee for the people." Id. at 1198. In this capacity, the State may regulate the waterways and tidelands to provide public benefit for all the people. Id. The State has the authority to regulate the area, subject to the supervisory power of the federal government, Id at 1199. The court concluded the comprehensive regulation set forth by the ordinance advanced the interest of the public. Id.at 1198-99. The ordinance provides for anchoring in certain areas but does not forclose public use of the areas in which anchoring is prohibited. The court concluded the resulting inconvenience to the plaintiff did not invalidate the ordinance. Id. at 1200.

The court finds the reasonings and conclusions in the above cases to be persuasive and en pointe to the current case. Again, the court finds the Port District and the State have not acted beyond their authority. The Port District's ordinance benefits the public and provides an alternative site for mooring for individuals, like the plaintiff, who wish to reside on their vessels. The ordinance continues to provide adequate access to the public and is designed to enhance the public's access and enjoyment by minimizing the environmental consequences of mooring

and anchoring.

The court also finds the ordinance is not inconsistent with federal law. The court finds the case presented by the plaintiff is not en pointe. United States v California, 85 S.Ct.1401 (1965). In that case, the Supreme Court held the Submerged Lands Act grants each state jurisdiction over all submerged lands shoreward of a line three geographical miles from its coast line. This case is further justification for the defendants' authority to regulate the waters within the bay. Finally, the plaintiff's right to travel has not been infringed.

Because the court finds oral argument would not add to the legal issues, the court exercises its discretion to submit the matter on the papers. Southern District Local Rule 7.1(d)(1). Accordingly, the court grants the motion to dismiss.

IT IS SO ORDERED
DATED 7/21/95

Marilyn L. Huff, Judge
UNITED STATES DISTRICT COURT